

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

UNITED STATES SECURITIES
AND EXCHANGE COMMISSION,

Plaintiff,

v.

DRIVE PLANNING, LLC, and
RUSSELL TODD BURKHALTER,

Defendants,

and

JACQUELINE BURKHALTER,
THE BURKHALTER RANCH
CORPORATION, DRIVE
PROPERTIES, LLC, DRIVE
GULFPORT PROPERTIES LLC,
and TBR SUPPLY HOUSE, INC.,

Relief Defendants.

Case No. 1:24-cv-03583-VMC

**RECEIVER’S UNOPPOSED MOTION FOR AUTHORIZATION TO
EMPLOY PRETI FLAHERTY BELIVEAU & PACHIOS, LLP AS THE
RECEIVER’S NEW HAMPSHIRE LOCAL COUNSEL**

Kenneth D. Murena, as Court-Appointed Receiver (the “Receiver”) in the above-styled action, through undersigned counsel, hereby files his Unopposed Motion for Authorization to Employ Preti Flaherty Beliveau & Pachios, LLP (“Preti Flaherty”) as the Receiver’s New Hampshire local counsel, *nunc pro tunc* to

September 11, 2024, to assist the Receiver to have an action brought against Drive Planning, LLC stayed or dismissed, and to represent the Receiver and Drive Planning, LLC in any other litigation the Receiver may discover or which may arise in New Hampshire, and states:

1. This action commenced on August 13, 2024, with the filing of the Securities and Exchange Commission’s (“SEC”) Complaint against Defendants Drive Planning, LLC and Russell Todd Burkhalter and Relief Defendants Jacqueline Burkhalter, The Burkhalter Ranch Corporation, Drive Properties, LLC, Drive Gulfport Properties LLC, and TBR Supply House, Inc.

2. On August 13, 2024, the Court entered an Order Appointing Receiver (the “Appointment Order”), appointing Kenneth D. Murena, Esq. as Receiver of Drive Planning, LLC (“Drive Planning”). Pursuant to the Appointment Order, the Receiver is authorized to, among other things, “engage and employ persons in his discretion to assist him in carrying out his duties and responsibilities hereunder, including, but not limited to, accountants, attorneys, . . . financial or business advisers, forensic experts, . . . or auctioneers.” *See* Appointment Order at ¶ 5. Prior to engaging any such professionals, the Receiver must first obtain an Order of this Court authorizing such engagement. *See* Appointment Order at ¶58.

3. Any professionals that the Receiver engages with this Court’s approval are “entitled to reasonable compensation and expense reimbursement from the

Receivership Estate as described in the ‘Billing Instructions for Receivers in Civil Actions Commenced by the U.S. Securities and Exchange Commission’ agreed to by the Receiver.” *Id.* at ¶ 58.

4. Accordingly, pursuant to the Appointment Order, the Receiver seeks the Court’s approval to engage and pay Preti Flaherty to provide the Receiver with assistance in fulfilling his duties under the Appointment Order.

5. Prior to the appointment of the Receiver, a complaint was filed by Joseph J. Prieto against Drive Planning, LLC in the Hillsborough County Superior Court (“New Hampshire Court”), Northern District of New Hampshire, alleging claims including breach of contract, fraudulent/negligent misrepresentation, unjust enrichment, and violation of the New Hampshire Consumer Protection Act (the “New Hampshire Litigation”).

6. Undersigned counsel has provided Mr. Prieto the Appointment Order which requires a stay of the New Hampshire Litigation. Because Mr. Prieto will not agree to file the Appointment Order in the New Hampshire Litigation or otherwise notify the New Hampshire Court of the entry of the Order, the litigation stay therein, or the commencement of the receivership, Drive Planning, LLC requires representation within the jurisdiction to protect its interests and enforce the Appointment Order. Accordingly, the Receiver seeks approval to engage and pay local counsel to seek the stay or dismissal of that litigation, and to otherwise

represent the Receiver and Drive Planning, LLC in that litigation and any other the Receiver may discovery or that may arise in New Hampshire, while ensuring compliance with local rules and procedures.

7. Preti Flaherty and its partner, Nathan Fennessy, who will assume primary responsibility as local counsel for the Receiver, have extensive experience handling complex commercial litigation and government investigations in the financial services industries. Mr. Fennessy frequently represents clients in state and federal courts, as well as before numerous state agencies and the Legislature.

8. Therefore, Preti Flaherty is well-equipped to represent the Receiver and Drive Planning, LLC in the New Hampshire Litigation or any other New Hampshire litigation that may arise.

9. In consideration for Preti Flaherty representing the Receiver and Drive Planning, LLC, the Receiver proposes to pay fees based on the time expended by lawyers, paralegals, and other professionals and paraprofessionals of Preti Flaherty. Mr. Fennessy's normal hourly rate shall be \$385.00 for purposes of this representation.

10. The Receiver will ensure that there is no duplication of efforts or expenses between or among the attorneys and other professionals and paraprofessionals he engages with the approval of this Court.

11. Preti Flaherty has informed the Receiver that they do not have any conflict with serving as counsel for the Receiver and Drive Planning, LLC for purposes of the New Hampshire Litigation or any other matter.

12. Due to the limited nature of the proposed representation, the Receiver requests leave to pay the invoices of Preti Flaherty, up to \$3,500, in full without any holdback or the need to file fee applications or obtain further order of the Court. In the event the fees of Preti Flaherty exceed \$3,500 for the New Hampshire Litigation and/or any other litigation that may arise in New Hampshire, the Receiver will file a fee application seeking this Court's approval and authority to pay any such excess, with a 20% holdback, subject to final approval by the Court at the conclusion of the case.

CERTIFICATION OF CONFERENCE

The undersigned counsel certifies that prior to filing this motion the Receiver conferred with counsel for the SEC, and with counsel for Defendants and Relief Defendants, regarding the relief requested herein and such counsel informed undersigned counsel that they have no opposition to the requested relief.

WHEREFORE, the Receiver respectfully requests that this Court enter the proposed Order attached as **Exhibit A**, (i) authorizing the Receiver's retention and payment of Preti Flaherty Beliveau & Pachios, LLP as proposed herein, and (ii) granting such other and further relief as the Court deems just and proper.

Dated: September 17, 2024.

s/ Russell Landy

Russell Landy, Esq.

Florida Bar No. 44417

Admitted Pro Hac Vice

*Lead Counsel for Kenneth D. Murena,
as Court-Appointed Receiver*

Adriana M. Pavon

Florida Bar No. 1025060

apavon@dvcattorneys.com

Admitted Pro Hac Vice

Russell Landy

Florida Bar No. 44417

rlandy@dvlip.com

Admitted Pro Hac Vice

DAMIAN | VALORI | CULMO

1000 Brickell Avenue, Suite 1020

Miami, Florida 33131

Telephone: (305) 371-3960

Facsimile: (305) 371-3965

*Local Counsel for Kenneth D. Murena,
as Court-Appointed Receiver*

Henry F. Sewell, Jr.

Georgia Bar No. 636265

Buckhead Centre

2964 Peachtree Road NW, Suite 555

Atlanta, GA 30305

Telephone: (404) 926-0053

hsewell@sewellfirm.com

CERTIFICATE OF SERVICE, FONT AND MARGINS

I hereby certify that on September 17, 2024, I electronically filed the foregoing document using the CM/ECF System that will automatically send e-mail notification of such filing to all registered attorneys of record.

I further certify that I prepared this document in 14 point Times New Roman font and complied with the margin and type requirements of this Court.

Dated: September 17, 2024.

s/Russell Landy

Russell Landy, Esq.

Florida Bar No. 44417

Admitted Pro Hac Vice